Supreme Court, U.S.
FILED

10-968 JAN 24 2011

OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

LOUTO J. BRAQUET, JR., et al.,
Plaintiff - Appellant – Petitioner,

v.

FIFTH CIRCUIT COURT OF APPEALS, et al.,
Defendants – Appellees – Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI
WITH APPENDIX A

LOUTO J. BRAQUET, JR.
c/o P.O. Box 58154
HOUSTON, TX 77258

Questions Presented

Denial of Access

Appellate Court

1. Does an unconsented-to appellate court clerk have signature authority to issue a show cause or dismissal order?

2. Are the appellate court's sanctions lawful?

Trial Court

3. Is the document purporting to schedule a pre-trial conference an order, at all?

4. If the document purporting to set up a pre-trial conference is an order, then:

   a. Who issued it — the "court" or the "clerk"?

   b. Since it very clearly intends also to constitute a "referral",

      1. is a "referral" order effective without an actual signature by the assigned "judge"?

      2. does any "judge" or "clerk" have signature authority to order such "referral" where the Record overtly shows lack of unanimous consent?

   c. Is it lawful to compel a conference before

amendment and Service are completed, for which the rules allow 120 days?

5. Did HITTNER err by denying Braquet's motion to strike?

6. Did the magistrate ever have authority to conduct any conference?

7. May HITTNER punish Braquet's refusal to consent to non-judicial decision-making by any means, including:

   a. unilaterally shortening the 120-day period for amendment and Service?

   b. dismissal?

8. May HITTNER change the case number?

9. Is it even possible to "fail to prosecute" before the time expires to amend and serve the Summons?

Why the suit exists, in part

10. May the appellate court accept/negotiate the filing fee and still dismiss for non-payment?

11. Has the incessant activity against the **"taxpayer" means "fiduciary"** litigants violated RICO?

12. By sanctioning Braquet, has the appellate panel criminally violated Braquet?

13. By sanctioning other **"taxpayer" means "fiduciary"** litigants, have the various members of the appellate panels committed witness tampering against Braquet?

14. By allowing, over Braquet's non-consent, the clerks to issue various orders, have various members of the appellate panels, as well as its chief judge, criminally violated Braquet?

15. By demanding sanctions against Braquet on appeal, have the various doj attorneys criminally violated Braquet?

16. Given criminal violations, are any of them actionable by Braquet?

Parties

No part***ies*** at trial or on appeal, yet.

Plaintiff(s), Appellant(s)

Louto J. Braquet, Jr.
LOUTO J. BRAQUET, JR.

Named Defendants (Appellees)

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT,
EDITH H. JONES, Chief Judge

UNITED STATES

UNITED STATES OF AMERICA

Additional defendant (appellee) kept in the loop

UNITED STATES TAX COURT,
JOHN O. COLVIN, Chief Judge

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Petition for a Writ of Certiorari

Braquet petitions for a writ of certiorari to the federal appellate court as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date of clerical, sanctions-based dismissal
9 November 2010 [+90: 7 Feb 2011].
No. 10-20665.

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c).
See also S. Ct. R. 11 and § 2101(c).
See also Cohen, 337 U.S. at 547; *Coopers & Lybrand*, 437 U. S. at 468; *Moses H. Cone Hospital*.

(v) Regarding statutory challenge
N/A

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court Jurisdiction

28 U.S.C. § 1333(1); also §§ 1331, 1346, and 1367.

Threshold focus – Sanctions, No. 08-61046

Sanctions-based dismissal on appeal. The (preliminary) merits issues are presented *pro forma*.

Denial of Access

Appellate Court.

UNCONSENTED-TO NON-JUDICIAL DECISION-MAKING.

Braquet objected to non-judicial decision-making both in this Notice of Appeal [8] and in his Brief. Still, the (deputy) clerk issued both a "show cause order" and the dismissal "ruling".

THE SANCTIONS.

In No. 08-61046, the panel sanctioned Braquet for arguing **"taxpayer" means "fiduciary"**. Braquet has not and will not yield to extortion, witness-tampering, etc. Because he refused to so yield, "the fifth" escalated the matter by denying access here.

Trial Court.

THE TIMING.

The 90-day mark. No pre-Service amendment (yet). No Summons requested (yet). No Service (yet). Given the consequences where Braquet prevails against specifically named defendants, Braquet patiently allowed "one last chance" for settlement. [1]

[1] Doc. [2], Cert. of I.P. Braquet did not file a Cert. of I.P. Such may be required independently from the illegal "order". It

PRE-TRIAL CONFERENCE "ORDER".

In [1] (USCA5 p.4), Braquet overtly objected to and withheld consent from all non-judicial decision-making, including magistrates and clerks.

[2] (USCA5 p.22). No autograph, i.e., "unsigned" in that sense, and no name. It says merely, "By Order of the Court."

Doc. [2] can't be a Standing Order. Magistrate assignment is case specific, as is referral. There is no judicial referral; hence, this a case-specific *clerical* "assignment ***and*** referral" "order".

The pre-trial conference date, [2], and the dismissal, [7], are 90 days after the suit was filed.

Braquet moved to strike that "order". [3]. Braquet also overtly confirmed his intent not to participate in anything involving an unconsented-to non-judicial decision-maker. [4].

HITTNER denied the motion, [5], and threatened dismissal for non-participation, i.e., non-consent.

Braquet neither consented nor participated. *See* Docket Sheet entry of 15 Sep 2010.

HITTNER also changed the case number. [5], [7].

Why the suit exists, in part

Filing fee mail fraud and violation of DTPA.

See [1], starting with USCA5 p.9.

Regarding No. 08-20082, Braquet appealed to the DC Circuit with the specific intent of mitigating "the fifth's" damages. The timing of the rulings was such that "the fifth's" deadline for the filing fee expired before Braquet had confirmation that the DC Circuit

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really screws over *this* settlement to name names before *knowing* they have no intent to settle. *Not* naming names that early *mitigates* social/political "damages", *fostering* settlement

was not an available appellate venue.

Acting within the time period for reconsideration, Braquet filed the motion and submitted the $455 fee. "The fifth" kept the fee but denied the motion.

RICO-level extortion and mail fraud.

See [1], starting with USCA5 p.10.

"The fifth" has sanctioned all **"taxpayer" means "fiduciary"** appellants. *See* No. 04-61146 (TELLO) (a national record); No. 05-60521 (Stearman) (a new national record); No. 05-60552 (Florance) (access restriction; i.e., no monetary sanctions); No. 06-60256 (Wallis); No. 08-61046 (BRAQUET); No. 09-60298 (COLLARD); No. 09-60455 (the TAYLORS).

Nothing about "the fifth's" incessant criminality (witnesses tampering, etc.) has changed the law.

Sedition, its conspiracy, and related crimes.

See [1], starting with USCA5 p.12.

In Nos. 08-20342 (original), 08-20470 (as amended), and 08-20471, "the fifth" refused to stop allowing the (deputy) clerks to issue rulings, despite Braquet's repeated objections to non-judicial decision-making.

When "zealous" becomes "criminal".

See [1], starting with USCA5 p.13.

While attorneys have to have a wide berth in which to practice their trade, that berth is not wide enough to include witness tampering, etc. In No. 08-61046, the doj attorneys demanded sanctions against Braquet because he argued the law: **"taxpayer" means "fiduciary"**. The fact "the fifth" has incessantly induced and rewarded doj's witness tampering is not a defense.

Argument

Summary

SD TX openly defies FRCP, rights, Due Process.

All litigants have 120 days to amend, if desired, and to serve Summons. FED. RS. CIV. P. 4(c)(1) , 4(m).

FED. R. CIV. P. 4(c)(1).

(c) Service with Complaint; by Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint **within the time allowed under subdivision (m)** ....

FED. R. CIV. P. 4(c)(1) (emphasis added).

FED. R. CIV. P. 4(m).

(m) Time Limit for Service.

If ***service*** of the summons and complaint is not made upon a defendant ***within 120 days*** after the filing of the complaint, ...

FED. R. CIV. P. 4(m) (emphasis added).

(*Service* and *proof of service* are two entirely different things. *But see* [2] (item 3, p.A-9).)

COMPELLED CONSENT.

All litigants have the right (not) to contract and the right of access to a § 451 "judge". *Gonzalez*.

EXTORTION, MAIL FRAUD, & ETC.

To dismiss *at the 90-day mark* for refusing to yield via extortion and mail fraud to compelled consent to both clerical ***and*** magistrate participation is to violate criminally (witness tampering, extortion, mail fraud, and etc.) the rights-asserting plaintiff (right of access, right (not) to contract).

Due Process can't tolerate this dismissal.

Denial of Access

Appellate court.

1. **Does an unconsented-to appellate court clerk have signature authority to issue a show cause or dismissal order?**

No. *Gonzalez* (**"If the parties consent ...."**). Witness-tampering, denial of access, *cf. Boddie*, *Harbury*, and denial of the right (not) to contract, e.g., *Standard Oil Co.* (in discussion of anti-trust law origin, right to carry on trade or business is recognized in context of right to contract), *Goodman* (right to contract in race discrimination context), *Plumbers' Union* (union tortiously interfered with right to contract), FED. R. CIV. P. 8(c)(1) (affirmative defense of duress), *Griswold* (even those *with* licenses cannot be compelled into commerce).

2. **Are the appellate court's sanctions lawful?**

"Federal" means "federal". It doesn't mean "national", and it most certainly doesn't mean "constitutional". At the level of a "state", "federal" means "by compact" or "by treaty". At the level of the individual, "federal" means "by agreement".

There are two generic forms of agreements: contracts and trusts. No one risks jail for breach of contract. Therefore, the operative law "governing" the "income tax" scam is the law of trusts. Who has the duty to report trust activity? The fiduciary. Who has the duty to make a distribution per the trust agreement? The fiduciary. Who risks loss of liberty for mere breach? The fiduciary. Hence, **"taxpayer" means "fiduciary"**.

Cf. Pollock I, 157 U.S. at 553-54 (1st ¶ of opinion) (non-agreement by even one beneficiary prevents amendment of the trust agreement). *See also* § 3002(3)(B) ("debt" includes "tax"), § 3002(15)(A) ("United States" means "a federal corporation"); *Planters' Bank* ("government" as proprietor); *Griswold* (STATE ***cannot*** compel commerce); BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."); BOGERT § 871 at 156 and nn.2, 3 (beneficiary must plead and prove the existence of the fiduciary duty); *Mitchell II*, 463 U.S. at 225 [2] (citing RESTATEMENT (SECOND) OF TRUSTS § 2 cmt. h) (elements of a trust); SCOTT, ABRIDGMENT, TRUSTS, §§ 66 (necessity of beneficiary and trust property), 74 (necessity of trust property), 112 (necessity of beneficiary).

A system that allows its sworn officers to defy the laws sworn to, via ***sanctioning*** those who argue that very law, is a system quite literally not only (A) at war with itself but also (B) incurably permeated with traitors and seditionists.

Thus, "the fifth's" financial sanctions against Braquet, because he argued **"taxpayer" means "fiduciary"**, aren't merely void as illegal. They're evidence of crimes actionable via this very suit.

[2] This ***strongly*** suggests larceny, thus a *constructive* trust ("relationship ***necessarily*** arises;" "property ***belonging to*** the Indians") May all Americans benefit from the lesson.

Trial Court.

3. Is the document purporting to schedule a pre-trial conference an order, at all?

What's an "order"?

At the very least, it's a written document bearing the signature by a § 451 judge, unless there's been unanimous consent to non-judicial decision-making. *Cf. F&M Schaefer Brewing Co* ("judgment" has to be signed by a judge). Braquet never so consented.

Regarding [2], it bears no name or autograph/signature of any § 451 "judge". Therefore, it's not an "order" in this case, at all.

4. If the document purporting to set up a pre-trial conference is an order, then:

a. Who issued it – the "court" or the "clerk"?

Document [2] assigns a magistrate and refers the case to that magistrate. That's case specific; so, [2] can't be a Standing Order. Also, there is no judicial signature. Therefore, [2] is a "clerical" "order".

b. Since it very clearly intends also to constitute a "referral",

1. is a "referral" order effective without an actual signature by the assigned "judge"?

Braquet overtly objected to non-judicial decision-

making. Thus, not even a § 451 "judge" could refer this case. Moreover, *Gonzalez* requires a review of the Record for unanimous consent. How can that ***ever*** be possible *at filing*?

> **2. does any "judge" or "clerk" have signature authority to order such "referral" where the Record overtly shows lack of unanimous consent?**

Gonzalez.

c. Is it lawful to compel a conference before amendment and Service are completed, for which the rules allow 120 days?

FED. RS. CIV. P. 4(c)(1), 4(m).

Conferences are for part***ies***. FED. R. CIV. P. 16. Without part***ies***, yet, how can there be a conference?

To compel a plaintiff to produce part***ies*** before that 120-day period runs is to compel waiver of that time period. HITTNER dismissed this case at the 90-day mark.

5. Did HITTNER err by denying Braquet's motion to strike?

See Questions 3 and 4. Document [2] is a clerical referral issued *at filing*. One unconsented-to non-judicial decision-maker invited another to participate, ***all*** over Braquet's objection. There is no authority in [2]. *Gonzalez*. It is properly struck.

6. Did the magistrate ever have authority to conduct any conference?

See Questions 3, 4, and 5. Given Braquet's overt non-consent, no clerk or magistrate ever had decision-making authority. *Gonzalez*. There is no lawful referral order.

7. May HITTNER punish Braquet's refusal to consent to non-judicial decision-making by any means, including:

a. unilaterally shortening the 120-day period for amendment and Service?

Gonzalez (**"If the parties consent ...."**); FED. RS. CIV. P. 4(c)(1), 4(m). *See also* Question 1.

b. dismissal?

See Question 7.a. (thus also Question 1). *Cf. United Student Aid Funds, Inc.*

8. May HITTNER change the case number?

FED. R. CIV. P. 79 doesn't overtly limit the authority to assign case numbers to the clerk, but it certainly and strongly suggests it.

9. Is it even possible to "fail to prosecute" before the time expires to amend and serve the Summons?

FED. RS. CIV. P. 4(c)(1), 4(m).

Why the suit exists, in part

10. May the appellate court accept/negotiate the filing fee and still dismiss for non-payment?

In No. 08-20082, Braquet's motion to reconsider was timely. "The fifth" kept the fee but denied reinstatement.

One or more of the following apply:

§§ 241, 242, criminal violation of rights under color, individually and in conspiracy;

§ 371, conspiracy to violate law of the United States ;

§§ 1341, 1349, mail fraud and its related conspiracy;

§ 1512(b), (c), (k), witness tampering and its related conspiracy;

§ 1513(b), (e)[2], retaliation (where "damages" includes "theft of") and its related conspiracy;

§ 1956, money laundering;

§ 7.01(a), (b), (c), parties to offenses;

§ 7.02(a)(1), (a)(2), (a)(3), (b), criminal responsibility for conduct of another, aiding and abetting;

§ 7.03(1), (2), defenses excluded;

§ 7.21(1), (2)(A), (2)(B), (2)(C) ("Agent", "High managerial agent");

§ 7.22(a)(1), (a)(2), (a)(3), (b)(1), (b)(2), criminal responsibility of corporation or association;

§ 7.23((a), (b), (c), criminal responsibility of person for conduct in behalf of corporation or association;

§ 7.24, defense to criminal responsibility of corporation or association;

§ 15.01, attempt;
§ 15.02. conspiracy;
§ 31.01, definitions relevant to theft offenses;
§ 31.02, consolidation of theft offenses;
§ 31.03. theft;
§ 36.05, tampering with witness;
§ 36.06, obstruction or retaliation;
§ 71.02(a)(9), enhancement for any offense under Chapter 36;

§ 32.42, criminal DTPA;
TEX. BUS. & COMM. CODE ANN. ch. 17, subch. 3, civil DTPA;
§ 71.02(a)(8), enhancement for any felony offense under Chapter 32.

See Bivens; *O'Shea*, 414 U.S. at 503; *Gravel*, 408 U. S. at 627; *Harlow*, 457 U.S. at 809-11, 813-19 (citing *Gravel*, immunity protection extends no further than its justification warrants; acts must still come *within* the scope of the *authorized* discretion); *Lanier*, 520 U.S. at 270-71. *Cf.* Rev. Stat. § 1979, 42 U.S.C. § 1983.

11. Has the incessant activity against the "taxpayer" means "fiduciary" litigants violated RICO?

How many times may "the fifth" criminally violate litigants before triggering RICO? *See* No. 04-61146 (TELLO) (record-setting award); No. 05-60521 (Stearman) (a new record-setting award); No. 05-60552 (Florance) (access restriction; i.e., no monetary sanctions); No. 06-60256 (Wallis); No. 08-61046

(BRAQUET); No. 09-60298 (COLLARD); No. 09-60455 (The TAYLORS).

See 18 U.S.C. § 1951; §§ 1962, 1963, RICO-level criminal activity and its related conspiracy. *See also Bivens.*

12. By sanctioning Braquet, has the appellate panel criminally violated Braquet?

Braquet has argued the very law to which the members of "the fifth" have sworn at least two oaths to uphold: (1) license; (2) office. "The fifth" sanctioned Braquet for arguing that law. Thus, they have denied his access, tampered with him as a witness, retaliated, committed extortion, mail fraud, and a host of related crimes, including conspiracy. *See, e.g.*, §§ 241, 242; § 371; §§ 1341, 1349; § 1512(b), (c), (k); § 1513(b), (e)[2], retaliation (where "damages" includes "theft of") and its related conspiracy.

See also Question 16.

13. By sanctioning other "taxpayer" means "fiduciary" litigants, have the various members of the appellate panels committed witness tampering against Braquet?

See Question 11.

To sanction any **"taxpayer" means "fiduciary"** litigant for arguing the law is to violate criminally each such litigant. *See* Question 12.

To violate criminally any **"taxpayer" means "fiduciary"** litigant is to engage in witness tampering against each member of that class of litigants. § 1512(b), (c), (k).

14. By allowing, over Braquet's non-consent, the clerks to issue various orders, have various members of the appellate panels, as well as its chief judge, criminally violated Braquet?

To compel Braquet to consent to clerical decision-making on appeal isn't just to deny his access to the court and to compel him to contract where he doesn't want to contract. *See* Question 1. To compel Braquet, or any litigant, to consent to clerical decision-making on appeal is to use color of law and office ("force") to alter the judicial structure of the "federal government". In other words, to compel Braquet to consent to clerical decision-making on appeal is to commit Sedition and its conspiracy. *See* 18 U.S.C. §§ 2384, 2385.

15. By demanding sanctions against Braquet on appeal, have the various doj attorneys criminally violated Braquet?

The doj attorneys requested sanctions against Braquet because he dared to argue the law. Hence, those attorneys tampered with Braquet as a witness, § 1512(b), (c), (k), actively using color of law and office to intimidate and harass Braquet out of arguing the law relevant to his case(s).

16. Given criminal violations, are any of them actionable by Braquet?

In addition to the crimes involved, sanctions are a social stigma. There has to be a remedy. *See Bivens*.

"[A] violation of federal rights may be a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations." *Brown*, 520 U.S. at 409. Law enforcement officers are not the only ones that USOA/U.S. have failed to train, here.

Relief Requested

Given the foregoing, Braquet requests relief as follows:

1. Grant this petition, issue the writ of certiorari, and take jurisdiction;
2. Confirm that any non-judicial decision-making happens, if at all, only by unanimous consent of the parties, both at trial and on appeal;
3. Strike all clerk-"signed" "orders" on appeal;
4. Vacate or otherwise overrule No. 08-20082 (BRAQUET), at least in part;
5. Establish a board of inquiry to investigate all the criminal conduct engaged by these "courts", "judges", "magistrates", and "clerks" against the litigants before them, especially the *pro se* litigants, and engaged by all these "attorneys" against their opposing parties, especially the *pro se* parties;
6. If this is a Rule 11 matter, in addition to the foregoing,

   A. strike [2], as an unconsented-to clerical referral "order";

B. confirm that a plaintiff has 120 days for pre-service amendment and service;

C. confirm that the *Gonzalez* consent analysis starts at *filing*, not *trial*;

D. confirm that the *clerk*, not a *"judge"*, assigns case numbers;

E. reinstate the case at trial;

F. establish where we are in Rule 4(m), e.g., reset that clock to Day 1; and

G. include instructions that HITTNER not participate on remand;

7. Otherwise, remand for briefing, etc., and ruling on the merits of this appeal; and, if at all possible, assign one or more members of this Court to that panel, or else derive a panel from one or more circuits other than "the fifth".

In addition, Braquet requests

8. The opportunity to brief any additional issues the Court may identify;

9. The non-argument calendar;

10. Costs; and

11. Any and all relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Louto J. Braquet, Jr.
Louto J. Braquet, Jr.
LOUTO J. BRAQUET, JR.

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Appendix A

Rule 14.1(i)(i)—Appellate "Ruling"

2010 Nov 9 – Dismissal "order" by unconsented-to (deputy) clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 10-20665

LOUTO J. BRAQUET JR.,

Plaintiff - Appellant

v.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT; UNITED STATES OF AMERICA,

Defendants – Appellees

Appeals from the United States District Court for the Southern District of Texas, Houston

CLERK'S OFFICE:

Under 5th Cir. R.42.3, the appeal is dismissed as of November 9, 2010, for want of prosecution. The appellant failed to timely comply with Court's notice of October 4, 2010.

Clerk of the United States Court
of Appeals for the Fifth Circuit

/s/ Claudia N. Farrington

By: _____
Claudia N. Farrington, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Rule 14.1(i)(ii)—Additional Orders

In "the fifth"

2010 Oct 4 – "Show cause" "order" by unconsented-to (deputy) clerk

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 04, 2010

Mr. Louto J Braquet Jr.
P.O. Box 58154
Houston, TX 77250 [sic]

No. 10-20665, Louto Braquet, Jr. v. United States Court of Appeals, et al
USDC No. 4:10-CV-2111

Your appeal cannot proceed until you have established whether a previous sanction imposed against you in case number 08-61046 , Braquet v CIRS , has been paid in full. Therefore, within thirty (30) days from this date, you must either submit payment to satisfy this sanction or advise in writing whether the costs taxed against you in that case have been paid. Attach any documentation you may have. If you fail to comply we will dismiss your appeal without further notice. Forthcoming submissions which do not provide proof of payment will be neither addressed nor acknowledged.

Sincerely,

LYLE W. CAYCE, Clerk

/s/ Claudia N. Farrington

By: _____
Claudia N. Farrington, Deputy Clerk
504-310-7706

2009 Jun 24 – Sanctions "order" in No. 08-61046

United States Court of Appeals
Fifth Circuit
F I L E D
June 24, 2009

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08-61046
Summary Calendar

LOUTO J BRAQUET JR,

Petitioner – Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent – Appellee

Appeal from the United States Tax Court
No. 13071-08

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges. PER CURIAM: *

Appellant Louto J. Braquet, Jr. purports to raise twenty-four issues for our review, including challenges to nine Tax Court rules, the authority of

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the Tax Court's chief judge to appoint special trial judges under 26 U.S.C. § 7443A, the resulting authority of the special trial judge, various clerical and administrative actions regarding his petition in Tax Court, and, finally, the Tax Court's dismissal of his petition disputing the Commissioner's notice of deficiency.

Braquet's numerous objections to Tax Court procedures are frivolous, and [⊥ 2] provide no basis for relief. His challenge to the notice of deficiency, dismissed by the Tax Court, is premised upon long-discredited theories of law and " 'shopworn arguments characteristic of tax-protestor rhetoric that [have] been universally rejected by this and other courts.' " *Stearman v Comm'r*, 436 F.3d 533, 537 (5th Cir. 2006) (citation omitted). "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." *Crain v. Comm'r*, 737 F.2d 1417. 1417 (5th Cir. 1984). They manifestly do not. Accordingly. we affirm the Tax Court's order dismissing Braquet's petition.

We also deny Braquet's "Motion to Strike 28 U.S.C. § 711 and 956, FED. R. APP. P. 27(b), and 5th CIR. R. 27," which attempts to challenge this Court's administrative handling of his appeal. Braquet alleges no prejudice from the orders issued in this case, and raises no basis for relief, so his motion is denied.

Finally, we consider the Commissioner's motion for sanctions pursuant to 28 U.S.C. § 1912 and Rule 38 of the Federal Rules of Appellate Procedure. In his

appeal and subsequent motion to strike, Braquet concedes that his theory of income tax avoidance has been repeatedly and completely rejected by this Court. *See, e.g., Stearman*, 436 F.3d at 537-38; *Tello v. Comm'r*, 410 F.3d 743, 744 (5th Cir. 2005). His remaining arguments, laced with invective directed at appellees, the Tax Court, and this Court, reflect a general contempt and defiance of the Court's authority and include a number of baseless accusations of criminal conduct. To countenance this abusive conduct and frivolous legal posture would be to invite Braquet and future litigants to repeat it. We have observed that "[w]asteful and dilatory appeals unjustifiably consume the limited resources of the judicial system: 'While judges, staff and support personnel have expended energy to dispose of this meritless appeal, justice has been delayed for truly deserving litigants.'" *Stearman*, 436 F.3d at 540 (quoting *Foret v. S. Farm Bureau Life Ins. Co.*, 918 F.2d 534, 539 (5th Cir. 1990)). We agree with the [⊥ 3] Commissioner that a lump-sum sanction of $8,000, in lieu of calculating the costs and attorney's fees it incurred in responding to Braquet's appeal, is appropriate.

We AFFIRM the Tax Court's order dismissing Braquet's petition, DENY his motion to strike, and GRANT the Commissioner's motion for sanctions in the amount of $8,000 for persisting in this frivolous appeal.

In the trial court

2010 Sep 16 – [7] Dismissal, and second change of case number

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Louto J. Braquet, Jr., Plaintiffs	§	
v.	§	Civil Action No. H-10-2111
United States Court of Appeals for the Fifth Circuit, Defendants.	§	

ORDER

On September 15, 2010, Magistrate Judge Stephen Wm Smith conducted a Rule 16 Scheduling Conference in the above-referenced cause. Plaintiff failed to appear at the Rule 16 Scheduling Conference. The Court

Dismisses the above-referenced cause for WANT OF PROSECUTION.

Signed at Houston, TX on the *16* day of September, 2010.

/s/ David Hittner
DAVID HITTNER
United States District Judge

2010 Jun 16 – [2] Unconsented-to clerical "order" setting pre-trial conference (at 90-day mark) with unconsented-to magistrate

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 4:10-cv-02111

ORDER FOR CONFERENCE
AND
DISCLOSURE OF INTERESTED PARTIES

1. Counsel shall appear for an initial pretrial and scheduling conference before:

United States Magistrate Judge
Stephen Wm. Smith
on September 15, 2010 at 10:00 AM
Courtroom 703. 7th Floor
515 Rusk Avenue
Houston, Texas

2. Counsel shall file with the clerk within fifteen days from receipt of this order a certificate listing

all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations,
or other entities that are financially interested in the outcome of this litigation. Ifs group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded . [sic] If new parties are added or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, then each counsel shall promptly file an amended certificate with the clerk.

3. Fed. R. Civ. P. 4(m) requires defendant(s) to be served within 120 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 120 days after the filing of the complaint may result in dismissal of this action by the court on its own initiative.

4. After the parties confer as required by Fed. R. Civ. P. 26(f), counsel shall prepare and file not less than 10 days before the conference a joint discovery/case management. **A courtesy copy shall be delivered to Jason Marchand, Case Manager for Magistrate Judge Stephen Wm. Smith, 5th floor, Room 5300.**

5. The court will enter a scheduling order at the conference.

6. Counsel who file or remove an action must serve a copy of this order with the summons and complaint or with the notice of removal.

7. Attendance by an attorney who has authority to bind the party is required at the conference.

8. Counsel shall discuss with their clients and each other whether alternative dispute resolution is appropriate and at the conference shall advise the court of the results of their discussions.

9. A person litigating pro se is bound by the requirements imposed upon counsel in this Order.

10. Failure to comply with this Order may result in sanctions, including dismissal of the action and assessment of fees and costs.

By Order of the Court

2010 Sep 8 – [5] Denying motion to strike, changing case number first time

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Louto J. Braquet, Jr., et al,	§	
	§	
v.	§	Civil Action No. 4:10-2111
	§	
United States Court of Appeals for the Fifth Circuit, et al, Defendants.	§	

ORDER

Pending before the Court is Plaintiff's First Motion to Strike (Document No. 3). Having considered the motion and the applicable law, the Court determines that the motion should be denied. Accordingly, the Court hereby

ORDERS that the First Motion to Strike (Document No. 3) is DENIED. The Scheduling Conference before Magistrate Judge Stephen Wm Smith is set for September 15, 2010 at 10:00 a.m. Failure to appear at the scheduling conference will result in the case being dismissed without prejudice without further notice.

Signed at Houston, TX on the *8* day of September, 2010.

/s/ David Hittner
DAVID HITTNER
United States District Judge

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

Nothing challenged. Rules 4(c)(1) and 4(m) are quoted in pertinent part in the Petition.

Rule 14.1(i)(vi)—Additional Essential Materials

2010 Nov 10 – Appellate clerk's post-dismissal letter committing witness tampering, extortion, mail fraud, etc., by promising Record-tampering (custody, taking, carrying away) unless Braquet acts (consents)

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

November 10, 2010

Mr. Louto J Braquet Jr.
P.O. Box 58154
Houston, TX 77250 [sic]

No. 10-20665, Louto Braquet, Jr. v. United States Court of Appeals, et al
USDC No. 4:10-CV-2111

We received your pro se brief/record excerpts. In light of the clerk's dismissal order, dated 11/9/10, we are taking no action on these documents.

You must advise this office, in writing, within 15 days, what means, if any, you will take to have your briefs and record excerpts returned back to you. Absent a response will result in your briefs and excerpts being recycled.

Sincerely,
LYLE W. CAYCE, Clerk

/s/ Jann Wynne
By: _____
Jann M. Wynne, Deputy Clerk
504-310-7688

cc:
Mr. Robert Joel Branman I

Documents Received - BR9